Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Applications of WorldCom, Inc. and	)	
MCI Communications Corporation for	)	CC Docket No. 97-211
Transfer of Control of MCI Communications	)	
Corporation to WorldCom, Inc.	)	

TO THE COMMISSION

COMMENTS IN SUPPORT OF GTE SERVICE CORPORATION'S MOTION TO DISMISS

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January 27, 1998

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The Rainbow/PUSH Coalition ("Rainbow/PUSH") respectfully submits these Comments in support of GTE Service Corporation's ("GTE") Motion to Dismiss[1/] the above-captioned applications (collectively "the application") of WorldCom, Inc. ("WorldCom") and MCI Communications Corporation ("MCI") for transfer of control of MCI to WorldCom.[2/]

The GTE Motion requests the Commission to dismiss the application because WorldCom and MCI failed to meet the Commission's clearly established information requirements for tranfers in the merger context. Rainbow/PUSH fully supports the GTE Motion and strongly urges the Commission to dismiss the application as patently defective.

SUMMARY

WorldCom and MCI have filed a "stealth application."[3/] If the Commission rains on the application, the public's radar can see it.

The merger application is fatally defective because it fails to provide even the most rudimentary information necessary for an informed analysis of its competitive effects. It provides no information germane to the other public interest questions the Commission must consider, including diversity, redlining, cream-skimming and discrimination. Dismissal of the application is justified because (1) it is so skeletal as to be unacceptable for

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1/ Motion to Dismiss of GTE Service Corporation, CC Docket No. 97-211 (filed January 5, 1998) ("GTE Motion").

2/ See "Commission Seeks Comment on GTE Service Corporation Motion to Dismiss Application of WorldCom, Inc. and MCI Communications Corporation for Transfers of Control of MCI to WorldCom" (Corrected Public Notice), CC Docket No. 97-211, DA 98-49 (released January 12, 1998).

3/ Rainbow/PUSH Petition to Deny at 4.

filing; (2) it violates the Commisison's policy on complete applications; and (3) its lack of substance anticipates a violation of the prohibition on raising new issues and arguments on reply. Since MCI and WorldCom had notice of the Commission's procedural requirements and knowingly assumed the risk of dismissal, they cannot now be heard to say that dismissal would deprive them of any process to which they are due.

I. THE APPLICATION IS SO FACIALLY DEFICIENT AS TO WARRANT DISMISSAL

GTE is correct: WorldCom and MCI "fail to provide the most basic information required...to evaluate the public interest and competitive ramifications of this transaction." GTE Motion at 2. As Rainbow/PUSH demonstrated in its Petition to Deny, "[t]he application stands mute on virtually all of the major public interest issues attendant to mergers of this nature and size, including the potential for redlining, cream-skimming and discrimination."4/ Another commenter, Telestra Corporation Limited, accurately pointed out that "neither the original nor the amended transfer of control application...contains any factual demonstration as to how the proposed transaction will enhance the competitive provision of Internet services."5/ The absence of such critical information renders the application fatally defective and subject to dismissal.

4/ Rainbow/PUSH Coalition Petition to Deny, CC Docket No. 97-211, at 4 (filed January 5, 1998) ("Rainbow/PUSH Petition to Deny").

5/ Comments of Telstra Corporation Limited, CC Docket No. 97-211, at 3 (filed January 5, 1998). see also Bell Atlantic Petition to Deny, CC Docket No. 97-211, at 1 (filed January 5, 1998) ("WorldCom and MCI proffer no analysis whatsoever of the competitive effects of the merger on Internet and long-distance markets.")

The Commission's framework for analyzing mergers is clear. The burden of proof lies with the applicant.[6] Indeed, the applicants are required to make several showings, including demonstrating that the proposed transaction is in the public interest and will not harm competition. Applicants are also expected to show how the transaction will impact on diversity.[7]

To meet this burden, applications are required to provide detailed information regarding, inter alia, (1) the definition of product markets; (2) the definition of geographic markets; (3) the identity of significant actual or potential competitors; and (4) a showing that there are pro-competitive or other public interest benefits that outweigh any anti-competitive effects.[8]

WorldCom and MCI have failed immeasurably to satisfy even a single information requirement. Even at the most basic level, WorldCom and MCI have made no attempt to define the relevant product markets, the relevant geographic markets, or the most significant market participants -- and nonparticipants[9] -- to be affected by the merger.[10] As GTE's Motion demonstrates,

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6/ NYNEX Corporation and Bell Atlantic Corporation (MO&O), FCC 97-286 (released August 14, 1997) ("Bell Atlantic/NYNEX Order") at 3 ¶2.

7/ See discussion in the Rainbow/PUSH Petition to Deny at 6.

8/ The Commission essentially applied these standards in its review of three major mergers in 1997. See Pacific Telesis Group and SBC Communications, Inc. (MO&O), 12 FCC Rcd 2624 (1997); Bell Atlantic/NYNEX Order; In the Matter of the Merger of MCI Communications Corporation and British Telecommunications plc (MO&O), 12 FCC Rcd 15351 (1997) ("BT/MCI Order").

9/ The merger will surely have a profound adverse impact on minority entrepreneurs, who are prevented by well documented entry barriers from participating in the market. See Rainbow/PUSH Petition to Deny at 8 n. 7 and 28-31.

10/ See GTE Motion at 8.

"WorldCom's public interest showing is virtually nonexistent, consisting of a handful of unsupported claims regarding multibillion dollars dynergies, efficiencies, and economics that will somehow materialize to enhance competition...."[11/]

At a minimum, the applicants must submit the information mandated under the Commission's merger standards. Rainbow/PUSH submits that a necessary component of this information is a meaningful showing of specific, enforceable and well tailored procedures and policies -- much more than platitudes and lip service -- which can assure the public that the companies will not and cannot discriminate; will not and cannot redline; will not and cannot cream-skim;[12/] and will integrate the merged entity at all levels, from the mailroom to the board of directors.[13/]

Without studies, data, and other quantitative information to support the ambiguous claims of WorldCom and MCI, and concrete written policies and procedures to protect middle income, low income and minority consumers and entrepreneurs from second-class economic citizenship, members of the public cannot effectively analyze the merger, and the Commission cannot arrive at a well-reasoned decision. Accordingly, Rainbow/PUSH urges the Commission to grant the GTE Motion and summarily dismiss the application.

II. PRECEDENT, COMMISSION POLICY, AND THE PUBLIC INTEREST COMPEL THE COMMISSION TO DISMISS THE APPLICATION

The Commission is well within its authority, and is in fact compelled to dismiss the application as patently deficient. "[T]he

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11/ Id. at 5.

12/ Rainbow/PUSH Petition to Deny at 22-23.

13/ Id. at 31-32.

Commission always has required applications to be complete in all critical aspects by some date or summer dismissal...."[14/] Where an application fails in a number of material respects to comply with the Commission's rules as to the contents of the applications, dismissal is warranted.[15/] Indeed, the D.C. Circuit has "approved the Commission's power...to reject applications that are patently defective."[16/] Moreover, the court has long held that it is "the applicant's responsibilltiy to ensure that the application it submit[s] [is] complete and complie[s] with the FCC['s] substantive and procedural rules."[17/]

Dismissal of the application is justified for each of three reasons: (1) it is so skeletal as to be unacceptable for filing; (2) it violates the Commisison's policy on complete applications; and (3) its lack of substance anticipates a violation of the prohibition on raising new issues and arguments on reply. We discuss each justification seriatim.

1. **Unacceptability for Filing**. As discussed above, WorldCom and MCI submitted applications that made no attempt to comply with the Commission's established information requirements. An application seeking approval of the largest business transaction in the history of mankind cannot possibly be approved based on one of the most bare-boned showings in the history of business. As the D.C. Circuit has previously concluded, "an applicant...who either

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14/ JEM Broadcasting Company, Inc. v. FCC, 22 F.3d 320, 327 (1994).

15/ Ranger v. FCC, 294 F.2d 240, 242 (D.C. Cir. 1961) ("Ranger").

16/ Radio Athens, Inc. v. FCC, 401 F.2d 398, 401 (D.C. Cir. 1968).

17/ Florida Cellular Mobile Communications Corporation v. FCC, 28 F.3d 191, 197 (D.C. Cir. 1994).

ignores or fails to understand clear and valid rules of the Commission respecting the requirements for an application assumes the risk that the application will not be acceptable for filing."18/ WorldCom and MCI have assumed this very risk by submitting a fatally flawed application that offers only conjecture and conclusions.

2. Complete Applications Policy. Dismissal would be consistent with the Commission's strictly enforced policy on compete applications. Recent strict enforcement of this policy can be seen in the context of the RBOC applications to provide in-region, long distance services pursuant to Section 271 of the Act.19/ The Commission's procedural rules for filing Section 271 applications require "that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making findings thereon."20/ The Commission enforced this rule against Ameritech when Ameritech sought to supplement its then-pending application

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18/ Ranger, 294 F.2d at 242.

19/ See Application by Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 91-1, at 21-22 (released February 7, 1997); Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan (MO&O), CC Docket No. 97-137, FCC 97-298, at ¶49 (released August 19, 1997); Application of BellSouth Corporation et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina (MO&O), CC Docket No. 97-208, FCC 97-418, at ¶¶37-38 (released December 24, 1997).

20/ Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act, 11 FCC Rcd 19708, 19709 (1996); Revised Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act, Public Notice, FCC 97-330, at 2 (released September 19, 1997) (emphasis supplied).

with an interconnection agreement approved after the filing of the initial application.21/ The Commission essentially barred Ameritech from filing the agreement by stating that it would "strike any such amendment or supplement."22/ In reaching this decision, the Commission reasoned that such action was necessary "to ensure that all commenting parties have an opportunity to evaluate a complete application, and thereby facilitate development of a complete record."23/

This policy on complete applications has even greater force in the merger context, because the stakes for the public are never higher than they are upon the occasion of a merger. A merger is the defining event for a company: it is the moment at which long term policies are established, and industry structure is irremediably locked in. Companies enjoy their greatest flexibility to develop or accept pro-consumer, pro-competitive policies when

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21/ See Application by Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd 3309 (1997) ("Ameritech Order").

22/ Id. at 3322 ¶21.

23/ Id. (emphasis supplied). While the Ameritech case involved a large company, Rainbow/PUSH notes that the complete applications policy is usually invoked against small and minority owned companies seeking entry. See, e.g., RDH Communications Limited Partnership, 6 FCC Rcd 4764 (1991), recon. denied, 7 FCC Rcd 5564 (1992) and JEM Broadcasting Company, Inc., 7 FCC Rcd 4324 (1992) (each applying the "hard look" standard). As the Commission has recognized, the same degree of trust afforded large companies must be afforded small companies. Salt City Communications, Inc., 8 FCC Rcd 683, 685-87 ¶¶11-23 (1993) (holding that since the Commission credits financial assurances by lenders in huge transactions that they are capable of raising construction funds, it must similarly credit financial assurances by MESBICs that they are capable of raising construction funds). Thus, the integrity of the Commission's complete applications policy requires the Commission to apply the same strict, no-nonsense requirements to large companies' applications that it applies to small companies' applications.

they merge. After a merger, business plans and expectations become very resistant to change, and the imposition of corrective steps may appear inequitable.24/

That is why a complete application is absolutely essential to the thoughtful and thorough evaluation of a merger, especially one as complex as the proposed WorldCom/MCI union. Consequently, as with Section 271 applications, "all of the factual evidence on which the applicanut would have the Commission rely"25/ should be included in the merger applicants' original filing. In contrast, the applications of WorldCom and MCI place no facts, data or studies in the record and thus make it impossible for the Commission and interested parties to analyze the merger's impact on consumers and competition. Certainly, without such critical information, the Commission cannot fulfill the requirement of Sections 214 and 309 of the Act that it make an affirmative determination that the merger would serve the public interest. The Commission should not expose the public to anti-competitive and anti-diversity injuries simply because WorldCom and MCI have deliberately chosen to submit defective applications. Far too much is at stake here to rely on mere bald claims and assertions.

3. **New Issues and Arguments on Reply**. The Commission's dismissal of the application would fully comport with well grounded procedural rules prohibiting parties from raising new issues and

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24/ See Rainbow/PUSH Petition to Deny at 11.

25/ See supra n. 20.

arguments on reply.[26] MCI itself has recognized the dangers inherent in submitting new factual information at later stages of the comment cycle. In the Ameritech Section 271 proceeding, MCI pointed out that allowing BOCs to rely on new factual evidence to demonstrate compliance with the requirements of Section 271 may encourage applicants "to game the system by withholding evidence until the reply round of comments, when they are immune from attack."[27] That very same danger looms here in light of the minimalist nature of the application.[28]

The Commission should not allow the applicants to subvert the information requirements and traditional procedural rules by introducing new evidence. Just as Ameritech was precluded from relying on an interconnection agreement and other data filed after its initial application,[29] so should WorldCom and MCI be barred from relying on facts, data or other information omitted from the

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26/ See, e.g., LaRouche v. FEC, 28 F.3d 137, 140 (D.C. Cir, 1994) ("it is our practice not to consider any issues raised for the first time in a reply brief); Bell Atlantic Telephone Companies, 4 FCC Rcd 1192, 1194 n. 20 (1989) ("[t]he practice of raising arguments for the first time in a reply that could have been raised in initial comments is disfavored...."); 47 CFR §1.45 ("[t]he reply shall be limited to matters raised in the oppositions.")

27/ Joint Motion of MCI, WorldCom and ALTS to Strike Ameritech's Reply to the Extent it Raises New Matters, or in the Alternative, to Re-start the Ninety-Day Review Process, CC Docket No. 97-137, at 10 (filed July 16, 1997). Cf. RKO General, Inc. v. FCC, 670 F.2d 215, 229 (D.C. Cir. 1981) ("the Commission is not expected to play procedural games with those who come before it in order to ascertain the truth[.]")

28/ Unfortunately, Rainbow/PUSH has no opportunity to respond to any newly-proferred facts. See "WorldCom, Inc. and MCI Communications Corporation seek FCC Consent for Proposed Merger", CC Docket No. 97-211, DA 97-2494 (released November 25, 1997) (providing no opportunity for petitioners to deny to file reply pleadings, and thus waiving 47 CFR §§1.45(b), 63.52(c) and 73.3584(b)).

29/ See supra ns. 21 and 22.

original application. Any other outcome would prejudice interested third parties by denying them an opportunity to comment, and would result in a skewed and incomplete record.

III. DISMISSAL OF THE APPLICATION WILL IMPOSE NO HARDSHIP ON THE APPLICANTS

Companies with the sophistication and resources to develop a business plan for a $41.8 billion transaction must be held to the highest procedural standards. If anyone has ever been on notice of Commission requirements, these applicants were. Like few others who appear before the agency, these companies were keenly aware of the Commission's public interest and competitive analysis framework through the series of recent merger orders.30/ They deliberately chose to ignore the standard. They knew the risk of dismissal and accepted that risk.

CONCLUSION

The application is defective on its face. An order dismissing it should be noncontroversial and routine. Such an order should be issued promptly. In dismissing the application, the Commission should specifically advise the applicants that if they choose to submit a new application, it should address, inter alia, the issues of diversity, redlining, cream-skimming and discrimination.31/

30/ See supra n. 8.

31/ See Rainbow/PUSH Petition to Deny at 34-35 for an iteration of some of the matters a complete application ought to address. The MCI and WorldCom Opposition, filed yesterday, contains only the most ambiguous and at times disingenuous responses to these issues. The applicants state that they "will have every incentive to expand MCI's current local service offerings to attract new customers" without discussing any actual plans to do so. Opposition at 20. They state they will not redline because "MCI was the first carrier to voluntarily create a

[n. 31 continued on p. 11]

Respectfully submitted,

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31/ [continued from p. 10]

long distance 'lifeline' program" (which is not described in any detail and whose relevance to the issue is not explained) and because "MCI and WorldCom network and switching facilities to date tend to be in and around city centers....In effect, this means that those low-income and minority communities located in and around these cities will be well positioned to receive the benefits local competition as MCIWorldCom builds out its networks." Opposition at 92. The applicants do not mention that their commercial-only facilities are in central business areas, bypassing and providing no service to nearby inner cities. Finally, the applicants' entire answer to Rainbow/PUSH's contention that they filed no EEO programs or data with the Commission and did not provide a plan to prevent discrimination was this sentence: "MCI and WorldCom are fully committed to equal opportunity opportunities." Opposition at 92. Rainbow/PUSH's concerns regarding minority entrepreneurship and the all-White, all-male membership on the WorldCom Board are not even mentioned in the applicants' 99-page pleading. The Opposition's meaningless and dismissive assertions and glaring omissions provide no confidence that these companies can be trusted to promote diversity and protect the interests of middle class, low income and minority consumers.

CERTIFICATE OF SERVICE

I, David Honig, hereby certify that I have this 27th day of January, 1998 caused a copy of the foregoing "COMMENTS IN SUPPORT OF GTE SERVICE CORPORATION'S MOTION TO DISMISS" to be delivered by U.S. First Class Mail, postage prepaid, or as noted below, to the following:

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